

REMARKS

The present Amendment is filed in response to the Office Action mailed January 4, 2007, and subsequent to a telephone interview conducted between the Examiner and the undersigned on January 31, 2007.

As an initial matter, Applicants acknowledge and appreciate the Examiner's willingness to conduct the above-referenced telephone interview. During the telephone interview, the Examiner and the undersigned discussed U.S. Patent No. 3,961,854 to Jaquet and possible amendments that may be made to independent claims 71 and 81 to distinguish the claims of the present application from Jaquet. During the telephone interview, the Examiner also asked whether a locking cap sold by Pioneer Laboratories and discussed in Judge Quist's Opinion had been disclosed in the prior art. In response to this inquiry, Applicants enclose herewith a copy of U.S. 2007/0055235, assigned to Pioneer Laboratories, Inc., which shows in FIGS. 19 and 20 thereof the locking cap disclosed on page 4 of Judge Quist's Opinion. As is evident in U.S. 2007/0055235, the earliest filing date for the Pioneer Laboratories device is February 5, 2004. In contrast, the present application is a divisional of U.S. Patent Application Serial No. 09/487,942 filed January 19, 2000. In addition, Applicants note that during the litigation between Pioneer Laboratories and the assignee of the present application, Pioneer Laboratories made no assertion or claim that its locking cap, shown on page 4 of Judge Quist's Opinion, had an earlier priority date than the locking cap disclosed in the present application.

In the Office Action, the Examiner rejected claims 71-83 and 85-106 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,961,854 to Jaquet. Referring to FIGS. 1, 4 and 8 thereof, Jaquet discloses a U-shaped element having two

branches 5 and 6 with threaded holes 12 provided at the top of the respective branches. The U-shaped element includes a recess 11 and a seat between the branches 5 and 6 that receives cylindrical plates 3 and 4. Each of the cylindrical plates 3 and 4 includes a recess 7, 8 for seating a rod 9. Referring to FIG. 8, after the rod 9 is seated in the recesses 7, 8 of the cylindrical plates 3, 4, the plates 3, 4 are positioned between the branches 5 and 6 of the U-shaped element and a flange 1 is positioned atop the plates 3, 4. Fasteners 24 are then passed through holes 2 in the flange and threaded into threaded holes 12 on the branches 5,6. Jaquet also shows a threaded stem 18 projecting from a lateral boss 17.

In rejecting independent claims 71 and 81 of the present application, the Examiner asserts that the threaded stem 18 shown in FIG. 8 of Jaquet is similar to the bone fastener 226 that extends from a bottom of the head portion 222 (see FIG. 13 of the present application).

In response to the Examiner's rejection, and in order to more clearly distinguish independent claims 71 and 81 over Jaquet, Applicants have amended independent claims 71 and 81 to recite a "fastener portion depending from the lower end of the head portion to engage the spine." Clearly, Jaquet's fastener 18 does not depend from a lower end of the U-shaped element.

Independent claim 71 is unanticipated by Jaquet because the cited reference neither discloses nor suggests the limitations found therein including "a fastener portion depending from the lower end of the head portion to engage the spin and mounted for angular movement relative to the central axis of the head portion." Claims 72-80 and 101-103 are unanticipated, *inter alia*, by virtue of their dependence from independent claim 71, which is unanticipated for the reasons set forth above.

Independent claim 81 is unanticipated by Jaquet because the cited reference neither discloses nor suggests the limitations found in independent claim 81 including "a fastener portion depending from the lower end of the head portion for engaging the spine." Claims 82-83, 85-100 and 104-106 are unanticipated, *inter alia*, by virtue of their dependence from independent claim 81.

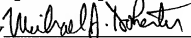
As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 28, 2007

Respectfully submitted,

By 

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